

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

**HAWAI'I ISLAND BURIAL COUNCIL
MEETING MINUTES**

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DATE: THURSDAY, NOVEMBER 17, 2005
TIME: 9:00 AM
PLACE: KONA OUTDOOR CIRCLE EDUCATIONAL CENTER
76-6280 Kuakini Highway
Kailua-Kona, HI 96740

Attendance:

HIBC Members: Ron Dela Cruz, Kohala
Leningrad Elarionoff, Kohala
Roger Harris
Roy Helbush
Ulu Sherlock, Hilo
Kaleo Kualii, Kona
Cynthia Nazara, Kona
Dutchie Saffrey, Puna
Charles Young

Absent: Jacqui Hoover
Anna Cariaga, Ka'u
Pele Hanoa, Ka'u
Ku Kahakalau, Hamakua

SHPD Staff: Sunny Greer, Cultural Programs Director
Keola Lindsey, Burial Sites Program
Maryanne Maigret, Hawai'i Island Assistant Archaeologist
Vince Kanemoto, Deputy Attorney General

Guests:	Iwalani Arakaki	Sonny Pa'alua
	Marian Channels	Ron Cawthon
	K. Angel Pilago	Lunakanawai Hauani'o
	Uilani Pauole	David H. Aipa, Jr.
	Ruby McDonald	Bob Rechtman
	Nani Langridge	Pam Mizuno
	Jojo Tanimoto	
	Liz Hauani'o	

I. OPENING REMARKS

HIBC Chair Charles Young (Young) calls the meeting to order at 921a.

Ron Dela Cruz (Dela Cruz) offers a pule.

Introduction of HIBC Members, State Historic Preservation Division (SHPD) staff and the Deputy Attorney General.

II. BUSINESS

A. APPROVAL OF THE OCTOBER 20, 2005 HIBC MEETING MINUTES

A motion is made to approve the October 20, 2005 HIBC meeting minutes. (Elarionoff/Dela Cruz).

Dutchie Saffrey (Saffrey) asks if the minutes are done verbatim?.

Keola Lindsey (Lindsey) says no.

Saffrey says she only got her copy of the minutes on Tuesday.

Lindsey says there was a delay in getting the minutes out to the Council Members.

Saffrey says there was a lot of reading to do and requests that the minutes be done verbatim because there were some things said at the October meeting that Saffrey does not see in the minutes.

Lindsey says the minutes are basically a summary of the discussions that took place.

Ulu Sherlock (Sherlock) says she did not get her copy of the minutes at all- the minutes were apparently sent to her office, and she was not at work.

Saffrey says she would like to defer.

Vote: 9 nays, the motion does not pass

A motion is made to defer approval of the October 20, 2005 HIBC meeting minutes until a later date. (Harris/Sherlock)

Vote: All in Favor

B. ESTABLISHING A COUNCIL POLICY REGARDING THE REASONABLE ADMINISTRATION OF ORAL TESTIMONY, INCLUDING TIME LIMITS ON ORAL TESTIMONY

Young says in August, the HIBC approved placing time limits on testimony from the public subject to the discretion of the HIBC Chair. The motion passed, but the HIBC did not set a

specific time limit, and the Council has been advised that a specific time needs to be determined. Young recalls talking about a 5 minute time limit.

Vince Kanemoto (Kanemoto) says the Council established a time limit, but did not specify what that time limit is.

A motion is made to establish a HIBC policy of limiting oral testimony to three minutes subject to the discretion of the HIBC Chair. (Elarionoff/Saffrey)

Roger Harris (Harris) says three minutes sounds short, but the main thing is that the time limit can be extended at the discretion of the Chair.

Vote: All in Favor

C. "FORBES CAVE", KAWAIHAE, SOUTH KOHALA, HAWAI'I ISLAND

Information/Recommendation: Review and Discussion on the history of the HIBC's involvement in the "Forbes Cave" issue. Review and Discussion on previous HIBC meeting minutes where "Forbes Cave" was on the HIBC agenda. Review and Discussion on the HIBC's involvement in the NAGPRA process as a claimant to 83 items removed from the "Forbes Cave" and formerly in the control and possession of the Bishop Museum. The HIBC will discuss its rights, privileges, duties, responsibilities and liabilities with the Deputy Attorney General regarding possible intervention in Na Lei Kawanānakoā Et Al. V. Bishop Museum Et Al., Civ No. CV05-00540 DAE/KSC, a lawsuit seeking the re-opening of the repatriation process under the Native American Graves Protection and repatriation act and removal of 83 items located at the "Forbes Cave". The HIBC will hear public testimony on the "Forbes Cave" issue. The HIBC will vote as to the disposition of the 83 items located in the "Forbes Cave" and will vote on how to convey its recommendations to any appropriate authorities and or courts.

Lindsey says staff attempted to compile the HIBC meetings minutes from past meeting where "Forbes Cave" was discussed. Those minutes from past meetings were included in the Council's mail out this month. Staff was not able to compile a comprehensive packet of correspondence that has been submitted to the Department relative to "Forbes Cave" through the years. Basically what the Council received this month is a summary of previous HIBC discussions on the "Forbes Cave" issue. Staff wanted to make sure this current Council had some idea of what took place with previous Councils.

Young asks about the chronology- it looks like this issue goes back to 1994.

Lindsey says staff also got a summary together of all the motions the HIBC had made through the years. The core of the discussions and testimony on this issue appear to run from November 1999 through January 2001.

Young says his feeling is that going back to 1994, the first time the issue was before the Council, it appears it was the HIBC's intention to repatriate, whether the items were under NAGPRA or not.

Saffrey says she received her packet on Monday. She tried to go through it all, but it was a lot of reading. Saffrey does not feel comfortable being involved with this. Saffrey's other

concern is that there are some minutes that are missing. Saffrey asks Lindsey if the Council will be getting the minutes that are missing.

Lindsey says there were certain HIBC meeting agendas that indicated "Forbes Cave" being on the agenda, but the minutes for those meetings are not available in the Kona office.

Saffrey asks if the Honolulu office will be providing them.

Lindsey says he will work with the Honolulu office on that.

Saffrey says that would be a more complete summary.

Lindsey says he does not know what the nature of the discussions were for those meeting minutes that are missing.

Sherlock says she just received her packet on Monday also. Sherlock has reviewed some of the minutes and it looks like each discussion addressed a different aspect of the "Forbes Cave" issue, it is scattered. Sherlock asks if there was a specific meeting that incorporated the entire issue. Sherlock is not comfortable making a recommendation on this matter or sharing her mana'o, she is not sure.

Young says there were a lot of different Councils involved with this issue. Young feels the Council was fairly resolute about what had gone back into the cave, although it was not known exactly when the items had gone back into the cave because it was not publicly announced. Once it was known the items had gone back, the Council was pretty resolved that the items should stay. This is not just about the moepu, it was about the iwi as well. We are concentrating on the moepu, but disturbance of the cave would affect the iwi as well.

Young says as you can see by the minutes, there have been many, many debates. Young has always been in favor of the descendants having the decision, but once the items went back into the cave, if the descendants want to get them out, Young feels it is not the Councils place to get involved with that. Young hopes this current Council can come up with our own ideas and thoughts based on the information that is available at this point. Young has not seen anything that indicates the Council felt that the items should not stay in the cave, once those items were returned to the cave.

Sherlock says it was interesting for her to see the discussion that took place at the HIBC meeting prior to Sherlock being on the Council. Sherlock sees the discussions not just being about "Forbes Cave", but addresses many larger issues.

Saffrey says her observation after reading what she could is that the intent of the four original claimants was to find a safe place for these items. When these items were put back into the cave, it was not with the understanding of the other three claimants. This is where Saffrey has difficulty because the HIBC was told at the September 15, 2005 meeting that everyone was in agreement with what was done, and Saffrey does not see that. There was agreement that the iwi should go back, and that was done. In terms of the 83 items, they were to be returned to Hawai'i Island, and a safe place was being

sought, and all four claimants agreed to that. One claimant then took the items and returned them to the cave without the knowledge of the other three claimants. The other three claimants then accepted what had happened because they felt it was too late.

Saffrey has difficulty in the other three claimants not being consulted or taken to the cave when the items were returned.

Young does not think this Council wants to be in a position in making a choice between what one claimant or another may or may not have done because the HIBC will then be in a situation of coming out in favor of one claimant or another puts the Council in a position we do not have to be in. The Council on numerous occasions has validated that the objects need to stay where they are. The current Council can make a very strong statement to that effect, it does not necessarily support Hui Malama, it supports the fact that the items are back in the cave.

If the Council votes to not support Hui Malama, and the Court changes that, and the HIBC supports that, then Young feels the Council is supporting the Court order to remove the items and disturb the cave again and that is something Young can't in his conscious mind, agree to.

Young asks Kanemoto if the Council votes to intervene in this matter, does that mean the Council is supporting the action of one of the claimants, or can intervention be seen to be just in support of the Council's position.

Kanemoto asks what the difference is.

Young says to him it means concentrating the Council's decision on the cave and the objects and the iwi.

Kanemoto says his advice to the Council is that anytime the Council is going to discuss its rights, duties, immunities and liabilities that the Council should go into Executive Session.

Generally speaking the question Young asked is about what intervention means. Does it mean that the Council is taking the position of the side the Council intervenes on, or is it just in support of the Council's position. Generally, lawsuits have two sides, and when you intervene on one side or the other, you are intervening in support of the side you are intervening on. If it is intervention on one side or another, just based on the determination of what the Council's position is on the specific matter being litigated, it is the same thing because once you intervene, you are on the side of the party you are intervening on.

U'i Pauole (Pauole) says she is with Native Hawaiian Legal Corporation who represents Hui Malama in the Na Lei Kawanānakoā versus Bishop Museum lawsuit which concerns the Kawaihae caves matter.

Young says at the October meeting, the HIBC voted to file an amicus brief for the court. Pauole brought up that the amicus was only applicable in one area of the court's jurisdiction. Young would like a little more clarity on what intervention means for the Councils. What position is the Council taking in intervention. Kanemoto has suggested that the position would somehow be in support of Hui Malama.

Kanemoto says in general terms, when you intervene in a lawsuit, you intervene on the side whose position you support.

Young feels that the Council's position that the items should stay in the cave, and that is the position the Council wants to maintain.

Dela Cruz says that because the items have been returned, the Council's position is that the items should stay where they are. If the Council intervenes, we are getting advised that means the Council is choosing a side.

Those items were stolen from that cave in 1905 and taken all over the place. Now there are some who say that because one claimant took the items back without the involvement or support of the other claimants, the process was flawed. Other say whether these items are burial goods or not, because these items are back in the cave now, the items should stay there. Dela Cruz is not sure the Council can state a position without choosing a side. Is there a way that the Council can express the position that the items spiritually and culturally in the Hawaiian way that the items are there now, they should stay there. Can the Council say that without choosing sides, or should the Council just let the court case run its course. If it is pono that these items are back, we need to express that, not in the sense of the legalities of how things are done today, where we are taking sides. We need to express if it is pono that these items are back in a Hawaiian way consistent with our culture. Do we say that and let the court decide.

Dela Cruz understands that some feel they were not involved with returning the items, but it is done. The only solution is to go back again and rip the cave apart to bring the items out. The thirteen claimants can then go through it all again.

Kanemoto says the Council should take public testimony and then go into Executive Session to discuss what legal avenues are open to the Council, and the possible consequences of those actions.

Young asks if Hui Malama does not prevail, what will happen to the items.

Pauole says they received a statement from the plaintiffs' attorney yesterday. On the appeal, there was order from the lower court to retrieve the items, and Hui Malama went to the higher court and they said don't do that right now. If Hui Malama is unsuccessful on the appeal, the plaintiffs have requested and expedited schedule to retrieve the items, that is a very real possibility.

Young asks if the plaintiffs have specifically asked for the removal of these items from the cave through the court.

Pauole says the plaintiffs have asked that the items be removed from their current location and returned to the Bishop Museum while the case is pending.

Dela Cruz asks if the items involve iwi.

Pauole says it is not clear from the case what items are to be removed. The lawsuit says artifacts, and Pauole is not sure what that means.

Lindsey says the items may contain portions of human remains, for example images with human hair, a bowl with human teeth, items that may have pieces of human bone incorporated into them but it is unclear if we are talking about individual burials being taken out.

Kanemoto asks if Hui Malama knows what artifacts we are talking about.

Pauole says artifact is the term that the plaintiffs have used. Artifacts are not even defined under NAGPRA. Hui Malama has asked for clarification on what Federal law is being applied in this case.

Leningrad Elarionoff (Elarionoff) says many years ago the bones were placed in the cave, and then the items were added later. Elarionoff asks if this correct.

Lindsey says when the cave was first documented by Forbes in 1905, there was a combination of both.

Elarionoff says we don't know if the items were placed there together or put in separately. Some say that the items were put there for safekeeping, to hide them. If the people who placed these items in this cave had the intent to hide the items, it makes it different from placing the items with the burials. We have people dealing with this issue today without an idea of what the original intent was.

The bones that were placed there originally for burial, yes those need to stay there. If the other items were placed there for preservation purposes, there is a conflict. If the items were placed there for safekeeping, and the intent was to bring them out when it was safe and to honor the past for future generations is something we don't know. We are dealing with groups who want it to bunch everything together and do what is right. Nobody can do what is right unless we know what the intent was of the people who put the items there in the first place. That question is never going to be answered, because those people are long gone.

Pauole says there has been speculation on why the items were placed in the cave. Those are the two points of view.

Young says the Council has identified these items as associated funerary objects as defined by NAGPRA.

Elarionoff says that is what has been determined today. The real question is what was the intent of the old folks.

Dela Cruz says we are looking at items that may have been placed in there for protection, and still have a great value and meaning. When the kapu system fell after the passing of Kamehameha, the kahuna felt they were losing the old religion and hid these items in caves that may have had iwi in there already. Dela Cruz is looking to the time before 1905 or 1819. If an item was placed in a cave with iwi in before 1819, it is possible it was

because it was an item with a relation to the iwi. If it is after 1819, when people were scrambling to protect what they could, that is a different story, and it is a question that may never be answered.

Kaleo Kualii (Kualii) asks if an inventory of the items has been done.

Lindsey says Bishop Museum would have the record of what items were loaned to Hui Malama.

Kualii says it sounds like there are questions about whether the items are in the cave.

Pauole says that question has come up. The plaintiffs have made a big deal about that. The four original claimants the HIBC, OHA, DHHL and Hui Malama the intent in documents under NAGPRA, they wanted to get the items, return the items and then seal the caves. That is what Hui Malama informed the other claimants after the items were returned.

Pauole says when they first came in September, they wanted the Council to reaffirm their position that the items should remain in the cave undisturbed. There really is no reason to take the items out, discuss the issue again and then put them back in. Whatever the underlying dispute is can be resolved without having to disturb the moepu.

Pauole says they came back to the Council in October because the HIBC is a claimant to these items and all of the claimants have a right to those items and can have a say in the lawsuit. Because the HIBC is not named in the lawsuit, they did come back to the Council to intervene, to have a say, that is what that means. Yes, intervening means coming in on a side, but the Council represents a view. If the Council feels the items should stay in the cave, it should be for the Councils own reasons not for anyone else's. The Council may agree with Hui Malama that the items should stay in the cave, but for your own reasons.

If the Council reaffirms its position that the items should stay in the cave through an official action, if the court asks where the other claimants stand, the Councils position can be presented. If the Council does not get involved, whatever happens in the court happens. Culturally, we are at a stalemate in this issue, so we have had to go to the legal system to decide this and one side will win and one side will loose. The items and the iwi do not have to be disturbed to resolve the underlying dispute.

The court case will proceed and there was a supplement order from Judge Ezra who said if he needs to he will send engineers to the cave to see how to open it to retrieve the items. That is what the plaintiffs intend to do on an expedited basis.

Young asks Pauole if their position is strengthened significantly if the Council intervenes.

Pauole says any support on one side or the other helps.

Young asks if there are any other discussions taking place to resolve this outside of the legal arena.

Paoule says they have made suggestions to the plaintiffs, but have not been able to come up with anything. They have heard from other claimants, the Nation of Hawai'i, Pu'uuhonua o Waimanalo and the Native Hawaiian Advisory Council supporting the items remaining in the caves. Hawaiian Homes has said non disturbance but will follow the court order.

Dela Cruz says this issue should be settled by the claimants as Hawaiian organizations who have come forward and recognized as claimants and taken this responsibility. Dela Cruz is upset that we cannot sit down as Hawaiians to get this resolved and in doing so take this matter out of the courts. This issue is not about the claimants, it is about what is pono for the iwi. This is a Hawaiian issue not a Federal or District Court issue. We need to kukakuka and ho'oponopono.

Paoule says they would like to resolve this through ho'oponopono. Unfortunately someone started a legal process.

Angel Pilago (Pilago) says this case compels us to leave these objects in place. The lawsuit seeks reopening the repatriation process under NAGPRA. The problem is the removal of the 83 items from the cave. Nobody can decide if the 83 items should be removed until judicial remedy is done. The HIBC is being forced to make a decision between contending parties. Pilago feels the items should remain in place until the court makes a ruling to avoid harm to the judicial process and harm to the purview of this Council.

Elarionoff says the last time Pilago testified at the October HIBC meeting, Pilago recommended intervention.

Pilago says the lawsuit as stated is flawed. In the sense of allowing the process to continue the Council would need to intervene but Pilago does not know if intervention is the right word.

Ruby McDonald (McDonald) says this Council must reserve its neutrality. The record is there and it speaks for itself. Down the road if need be, the Council can resume discussions.

Lian Fleming (Fleming) says her issue is really about lawful jurisdiction within these Hawaiian Islands. The HIBC is in an unlawful jurisdiction. This issue is not just about "Forbes Cave" but about all iwi and antiquities.

A motion is made to go into Executive Session to discuss the HIBC's rights, duties, privileges and liabilities relative to the "Forbes Cave" issue with the Deputy Attorney General. (Sherlock/Saffrey)

Vote: All in Favor

Young says it is 1045a. The HIBC will take a 15 minute break and then go into Executive Session at 1100a.

The HIBC enters Executive Session at 1100a.

The meeting is opened at 1144a.

Kaleo Kualii left the meeting at 1129a. Quorum is maintained.

Young says there are going to be some people missing after lunch that we really need here, so there is a possibility the agenda will be adjusted. La'aloa is next on the agenda, and we are really going to need substance for that, but we are going to have some people who are going to be gone for awhile after lunch.

When the Forbes item is closed, the HIBC will break for lunch. If the people we need back are here, we will go into La'aloa, if not we will move the agenda a bit.

Young asks the HIBC members if there will be any more discussion on the "Forbes Cave" issue, if not this agenda item will be closed.

Kanemoto asks Young if the Council will be making any recommendations.

Young says he is not hearing any from the Council members.

Kanemoto says the Council should at least move to defer.

Dela Cruz says there should be a motion to reaffirm the motion that was made in September and rescinded in October.

Young says that was a recommendation that the items in "Forbes Cave" be left in the cave undisturbed.

Kanemoto asks how this recommendation will be conveyed. Will it be in the form of an affidavit. The Council needs to clarify how any recommendation will be conveyed.

Young says an affidavit would be the best way.

Kanemoto says if the vote carries, one person will have to be designated on behalf of the Council to prepare the affidavit.

***A motion is made to reaffirm the HIBC's September 15, 2005 recommendation that the burial items in the "Forbes Cave" be left undisturbed and that this recommendation be conveyed in the form of an affidavit prepared by the HIBC Chair and submitted to the Native Hawaiian Legal Corporation.
(Dela Cruz/Sherlock)***

Helbush asks if this recommendation is saying that the items should be left there in perpetuity or until the lawsuit is decided.

Young says the original motion in September 2005 said that the items should be left undisturbed. There was no timeframe on it.

Elarionoff says he will not support the motion as stated and would like to explain why. At the October meeting testimony was given that it is hard to criticize the Bishop Museum,

because some who did not have their kupuna had the Museum who preserved the “Forbes Cave” items and many others safe so people could see the works of our ancestors. Others have said preservation means continuing the legacy of honoring our past.

Elarionoff says from what he understands from these discussions the items were not necessarily placed in the cave with the iwi, but were placed in there to be stored or secured.

Saffrey says our culture continues to be revived. We have so many Punana Leo Schools perpetuating our language. There are items in existence today that would have been destroyed during the time of Ka’ahumanu if those items had not been hidden.

Saffrey says as she reviewed the documents in the mail packet this month, she was fortunate to turn to a statement from Jimmy Clark. Saffrey suggests that the other Council members read this statement. Clark worked at the Bishop Museum and cataloged many items. Saffrey feels that Clark clearly stated that the iwi be returned, but the items should be preserved.

Saffrey says she was exposed to these items at the Museum. She did not have the kupuna, nor do many of our children coming up. These items need to be preserved, and Saffrey feels she is standing up for our children to allow them the opportunity to see these items.

Dela Cruz says maybe duplicates or replica can be made. That is done all over the world in many different cultures today.

Saffrey says how can we make duplicates when the items are buried.

Young says he is hearing arguments from both sides, that some say the ancestors want them out, others say the ancestors want them in. It would be a lot easier to make this decision if the items were out of the cave at the present time, but they are not.

Young feels if he makes a decision to take the items out, he is telling his ancestors that they do not matter anymore. These objects are obviously very important, but if we say these items should stay in the Museum, are we saying let’s go look for all the other burial objects and take them away from the iwi.

Young seen the objects, and they are very beautiful and our children should see them, but the fact of the matter is that they are in the cave now.

Harris says there is a lot in the record on this issue. Harris says he is not Hawaiian, but feels similar in his heart to Saffrey and Elarionoff. We need to let the process continue. With all due respect, Harris will not vote for the motion.

Elarionoff says if there was a way we could no for sure that these items were placed with the iwi it would be really simple, but we will never know.

Dela Cruz says the items are the focus of the issue, but this is a burial cave. We are going in there again and disturbing those people. Those items were there before, that cave was sealed a long time ago. That cave was robbed. The respect and dignity of the iwi in that

burial should be the Council's concern. To violate the sanctity of those kupuna again, Dela Cruz says no. However those items got in there, they are in there. We still call this place "Forbes Cave" that makes Dela Cruz sick.

**Vote: 4 ayes (Dela Cruz, Nazara, Sherlock, Young)
4 nays (Elarionoff, Harris, Helbush, Saffrey)**

The motion does not carry.

A motion is made that the Council by way of a committee communicate with the other 12 claimants to the "Forbes Cave" items to present the HIBC's position on the matter and to discuss the other 12 claimant's position on the matter. (Dela Cruz/Harris)

Kanemoto says the Council needs to specify who will be on the committee, and what the scope of the assignment will be.

Harris does not see anything wrong with going to the other claimants to discuss this. The issue is not over.

Kanemoto says the Council needs to have a position first. The previous motion failed to establish the Council's position. Since the motion did not carry.

Elarionoff says that the failed motion shows that this Council is divided. It is a confusing issue, and by trying to communicate with the other claimants, the Council is asking everyone to try and work it out outside of court.

Kanemoto says the Council does not have a position it can convey. The Council can vote on a motion to recommend that the Council adopt a position that the Council cannot reach a consensus on the disposition of the artifacts. If the vote passes, that would be the Council's position.

Young says the motion that failed does not invalidate previous positions that this Council has taken.

Kanemoto says the present Council is the one that is speaking and taking action right now.

Young says the motion that failed only addressed the unauthorized motion that was made at the September 2005 meeting, it did not invalidate all the other motions made by previous Councils.

Dela Cruz withdraws his motion.

A motion is made that a letter be written by the HIBC Chair to the other 12 claimants to the items in "Forbes Cave" seeking their mana'o on the short term disposition of the items. (Saffrey/Dela Cruz)

Elarionoff says when the decision comes down from the court, it will happen regardless of what this Council says.

Sherlock says this is just a recommendation.

Vote: All in Favor

Sunny Greer (Greer) says before the Council breaks for lunch she would like to disclose that she and the Deputy Attorney General will be leaving to go to another meeting. They will try to the best of their ability to return within the hour the Council is at lunch.

A motion is made to recess for Lunch. (Harris/Sherlock)

Vote: All in Favor

The meeting reconvenes at 129p.

Harris left the meeting at 1215p. Quorum is maintained.

D. BURIAL TREATMENT PLAN FOR SITE 2009- HAUKALUA HEIAU, LOCATED IN LA'ALOA BEACH PARK, LA'ALOA AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND [TMK (3) 7-7-10:36]

Information/Recommendation: Recognition of Lineal and/or Cultural descendants and status update by SHPD staff.

Young says Greer and Kanemoto are not from their other meeting. Young would like to postpone this item, and come back to La'aloa when Greer and Kanemoto are here.

Lunakanawai Hauani'o says he is in opposition to moving La'aloa on the agenda, but understands the considerations. Staff should be here, Hauani'o does not understand what these other priorities are.

Young says he understands Hauani'o opposing moving the La'aloa item, but asks Hauani'o if he is ok with moving La'aloa down on the agenda. If Hauani'o is opposed to moving La'aloa, the Council will be forced to recess until Greer and Kanemoto return.

Hauani'o says he just wanted to state his opposition for the record. Staff should be here, this should be their priority, but Hauani'o will defer his opposition in consideration of time.

A motion is made to amend the agenda and move La'aloa down on the agenda. (Nazara/Sherlock)

Vote: All in Favor

III. INADVERTENT DISCOVERIES OF HUMAN SKELETAL REMAINS

**A. WAINAKU, HILO DISTRICT, HAWAI'I ISLAND
[TMK (3)-2-6-006:006]**

**B. KAHUKU AHUPUA'A, KA'U DISTRICT, HAWAI'I ISLAND
[TMK (3) 9-2-186:034]**

**C. KAUMALUMALU/PAHOEHOE AHUPUA'A, KONA DISTRICT, HAWAI'I ISLAND
[TMK (3) 7-7-004:062]**

**D. HONOKOHAU AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND
[TMK (3) 7-4-008:047]**

Lindsey says the Department is attempting to update the Councils each month on inadvertent discoveries that have occurred the prior month and to inform the Councils of any determinations the Department has made on disposition of these inadvertent discoveries and to potentially seek recommendations from the Council on how the Department should proceed on the matter.

Lindsey says he is not sure if this was addressed in the training sessions that were held for the HIBC in July. When there are inadvertent discoveries of human skeletal remains, the Department is required to consult with among other parties and the regional representative of the Island Burial Council where the remains were discovered if the remains are Native Hawaiian.

Lindsey says remains were identified in Wainaku, Hilo by a homeowner who was doing home renovations. Because the remains were located in close proximity to a cesspool line and additional concerns on how the site could be protected as the renovations were completed, the Department determined to recover these remains. Final disposition is pending, although the landowner has preliminarily agreed to rebury these remains in close proximity to where they were identified. The remains are in curation on the property.

There was also an inadvertent discovery in Kahuku, Ka'u. A bulldozer operating on a property could see remains in a small lava blister and contacted the Department. The landowner appears to be agreeable to preservation in place, and the Department is working to finalize that agreement.

In Kaumalumalu, Kona an archaeologist conducting data recovery in a site identified remains, and they are being treated as an inadvertent discovery. When remains are found in a site not classified as a possible burial in an inventory survey, those remains are treated as an inadvertent discovery. In this case the landowner is traveling internationally, so the Department has been granted a time extension of the statutory timeframe for the Department to make a determination on the matter by the landowners representative.

In Honokohau, Kona another archaeological consultant identified remains during data recovery. In this case the landowner/developer has committed to revising plans already approved by the County. It involved realigning a road in a subdivision. Not only is the burial going to be preserved in place, but the entire site will be preserved. That decision has been finalized.

Elarionoff asks about the age of these different iwi.

Lindsey says the first thing the law requires the Department to do is to determine if the remains are 50 years or older. Lindsey says he is not talking about the age of the individual, but when that person was buried, was it more than 50 or less than 50 years ago.

Most times that is done by context. What is going on around or with the iwi themselves. Sometimes there are obvious indicators that allow speculation of when the iwi were placed in the ground clothing or items with the iwi. The main concern is whether this is a matter for the Police Department to handle, because obviously the Department will defer to them.

Elarionoff asks about the remains in Wainaku. How old were they determined to be.

Lindsey says the remains in that case were determined by a archaeologist to be 50 years or older, but there was nothing during the recovery of those remains that allowed speculation of when the remains were buried.

If there is ever anything that even hints at jurisdiction not being with the Department, the Department would rather err on the side of caution and let the Police sort out where jurisdiction belongs.

Young asks in a case where an inadvertent occurs in a project where there is an approved Burial Treatment Plan, how is that handled in terms notification. The Council has made recommendations on inventory surveys. Young asks if those burials will be coming back to the Council as a matter of routine.

Lindsey says ideally before final disposition is determined, the Department would like to come to the Council for recommendations. The limiting factor there is that the Department is required to render a determination in 2-3 working days absent an extension by the landowner. There is a potential that the Department could work with the landowner to come back to the Council. Lindsey thinks that a lot of it has to do with where the discovery falls on the calendar and what the nature of the project is. Every situation is different, and each landowner is working with their own set of variables and constraints.

Data recovery inadvertents are a little different in the sense that these are archaeologists working ahead of the machines. While the development plans may be in place, it is not a situation where a section of a jobsite needs to be shut down. If we are in a situation where the land is subject to active construction, that brings a whole new set of variables and constraints for both the landowner and the Department to deal with.

Lindsey says to answer Young's question, the Council will be informed of the discovery, but the Council's ability to make a recommendation in the overall determination process would be on a case by case basis.

Young says that his concern is that it always seems that there are inadvertents after the burial treatment plan has been accepted. Young feels it is important that the Council gets that feedback. The burial may be out of the Council's jurisdiction, but burials are never out of the Council's kuleana.

Dela Cruz asks about the definition of inadvertent. Inadvertent makes it sound like the burial is not important. Where you have a place where people lived, it should be expected that there will be burials. These whole islands are burials. Because a given burial is beyond memory, and the current laws and how the burial was discovered, that makes it

inadvertent. Dela Cruz wonders if there is a way the Council can determine that all burials in a given area are known.

Lindsey says the only way burials are classified as previously known are if they are identified during an inventory survey, or if families identify burials through written or oral testimony.

One of the biggest criticisms Lindsey has heard about the word inadvertent is that it means the unanticipated discovery of iwi. For a lot of people when the discovery happens, they will say that everyone knew there were burials in the area, they just could not say specifically where.

Saffrey asks if the Department keeps track of where there are burials and sites in a given area. If there is a record of sites or burials in an area, it should be obvious that down the road in the next lot there could be more. Is there historic research being conducted to identify what was going on in a given place.

Lindsey says the Department does try and use existing archaeological data to determine the scope of new archaeological work in a given area.

Before an archaeological consultant even starts their fieldwork, they will do background research on the area they are working in. The archaeologists that Lindsey is familiar with don't just go to a property and start working, they are in the SHPD office talking with staff and out in the community talking to people about what the history of that place is. The idea is to get information from the written record and from the living descendants.

Elarionoff says it is very important that these discoveries are handled properly through cooperation of all parties involved and not just cover over or move or hide the sites because they are inadvertent. It can be difficult, but everyone has to cooperate.

Lindsey agrees. Lindsey says even within the inadvertent classification, there are several categories. If someone goes into an undocumented cave and finds iwi that is an inadvertent. If the ocean comes up and uncovers iwi that is an inadvertent, so inadvertents are more than just the iwi that are found during data recovery or development.

Dela Cruz asks about situations where there are fires in areas where there are known burials or sites. They call in the bulldozers. Is there anyway the Fire Department can work with Historic Preservation to deal with sites in the area. Maybe archaeologists can be called in or the Fire department can let the fire burn if it is in an area where no lives or homes are in danger.

Lindsey says the Fire Department is going to decide how they are going to fight fires, but there have been situations where archaeologists have been called in to assist the Fire Department in avoiding sites.

Maryanne Maigret (Maigret) says there have been situations where staff has been called in to assist with fires in State Parks land in Lapakahi. In those situations the Fire Department has been polite in listen to suggestions of letting fires burn through certain areas. In respect to private property, that is something that should be looked at. If it involves

sharing information with the Fire Department and having rapid access to that info, sometimes it does come down to having someone with knowledge of the area or an archaeologist working with the bulldozer. Historic Preservation does not have a systematic plan with the County Fire Department similar to something that exists in the National Park.

Dela Cruz says when he was working with the ranch, there were times when fire came through and the bulldozers had to go in.

Lindsey says it would be a tough timeline to establish because Lindsey feels that the priority would be to allow the Fire Department to do what they have to do.

Maigret says the Division also comments on watershed management plans which address during fire activities and post fire management. If Federal money is involved, we get into cultural resource management.

Hauani'o says he has family up in Wainaku. His uncle was the kind obake man with the Mormon Church, and Hauani'o remembers how his uncle would try and find families, talk to the mailman and talk to the teachers. The Historic Preservation Division needs to do a better job of taking the initiative of tracking families that lived in a given area where these inadvertents are occurring and contact those families. Hauani'o has testified before that the Division is broken, they need more money and more staff. The Division needs someone who specializes in tracking families. There needs to be standard.

Hauani'o says the problem is that the plans and reports that are coming to this Council are missing all of the data. If a plan comes to this Council that does not propose preservation in place, it is a plan that should not be considered. The 'au'au stays there, you can't move that it is impossible. You can move the iwi, maika'i, but the 'au'au is always going to stay there and now the hewa comes.

Sherlock says in the Wainaku case, the house was built in the 1920's. The iwi that were discovered were there already but nobody knew about them until this homeowner went in to renovate. It is not like the Division knew about the iwi ahead of time and decided to move them. This particular situation was tough, it had nothing to do with ignoring the families, but there may be other situations that what Hauani'o is saying could be applied.

Haunai'o understands what Sherlock said. Hauani'o is concerned about who gets to decide that the iwi get moved. We are talking about two different belief systems, one says it is ok to move, the other says no you got to leave them there.

Young says in both of these belief systems we are talking about the descendants are the ones who make that decision. There is always going to be a clash in beliefs, but if we have descendants to make the decision, great. In an inadvertent, the Department is going to do it's best to consult.

Lindsey says he agrees that the families and the descendants should be the ones to make the decision. What complicates this whole situation is the statutory timeframe we are running under. The Department is required under the statutes to make a determination in 48 hours absent a time extension from the landowner. In some of the Departments bigger cases, we have over 100 descendants, and a letter couldn't even go out in 48 hours.

Lindsey feels that in order to follow Hauani's advice to find families, which is culturally appropriate involves amending the statutes to give the Department more time.

Hauani'o asks if that 48 hours is a reasonable amount of time to determine if someone's vested right should be terminated. We are talking about the rights of the living and the rights of the dead.

Lindsey says on O'ahu they have 24 hours.

Hauani'o says the Division really needs to research and extend that timeline so we can do that work.

Jojo Tanimoto (Tanimoto) says since we are talking about all of this, and the Department knows that these statutes need that amendment, what is the Department going to do about it and take the initiative. The Legislature is coming up.

Young says he hopes the Council's will take a more active role in the Legislative process.

Tanimoto says the Council needs to make a motion or a recommendation and go through those steps.

Young says he does not know if that is appropriate under this agenda item.

Kanemoto says it should be agendaized for the next meeting.

Lindsey says the are proposed amendments to 6E happening right now, Lindsey asks Kanemoto if this inadvertent timeframe issue could be added to that current proposal.

Kanemoto says Tanimoto should contact her legislator to propose additional amendments.

Lindsey says if that is something the Division could add to the current proposed amendments.

Kanemoto says he is not sure if a private individual can propose legislation.

Greer says it has to be introduced by a legislator. Nothing is preventing a private individual from going to their legislator and asking them to draft proposed amendments to 6E. It does not have to be a Council decision.

Young says we can put this on the agenda for the next meeting.

Bob Rechtman (Rechtman) says we should think of what should come to the Department and what should come to the Council. If a developer is coming in with a proposal to preserve in place, let the Department handle it. If someone is coming in to relocate, that is when the Council should be involved. Inadvertents should also come before the Council. Let the Department handle proposals to preserve in place.

D. BURIAL TREATMENT PLAN FOR SITE 2009- HAUKALUA HEIAU, LOCATED IN LA'ALOA BEACH PARK, LA'ALOA AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND [TMK (3) 7-7-10:36]

Information/Recommendation: Recognition of Lineal and/or Cultural descendants and status update by SHPD staff.

Kanemoto says when the Council recognizes lineal and/or cultural descendants, the agenda needs to read determination.

Sherlock asks what that means.

Kanemoto says the Council can receive the information, but can't make a determination at this meeting.

Greer says the Department is receipt of a lineal descent claim. The Department contracted a genealogist to review the claim. The Department is requesting the Council defer this matter because additional documentation is required. While the documentation submitted substantiates one descent line, additional information is needed to tie the applicant to the land in question.

Young asks lineal descent.

Greer answers yes.

Young says that means they have direct knowledge of who is buried there and descendancy to that person.

Greer answers yes.

Kanemoto says the definition of lineal descendant is a person who has a direct or collateral genealogical connection to certain remains.

Young says his reason for asking is that we have always given the most weight to lineals. Young wants to reiterate that for the Council.

Greer says it is a lineal descent claim. If the Council would like more specifics on what was actually reviewed, Greer discussed it with Kanemoto and the Council may have to go into Executive Session with respect to the description and location of a burial.

Greer says the request from the Department is defer making a recognition pending receipt of additional information, but this request is not binding on the Council.

Young says he would like to hear from the lineal descendants if they are recognized as such.

Iwalani Arakaki (Arakaki) says last year she gave the Council a copy of a deed going to La'aloa. Arakaki says she is a descendant and that needs to be said. The papers were supposed to be in with the Division.

Lindsey says the Department will work with Arakaki to make sure the necessary paperwork is in to review her claim. The Department will set up a date and time that fits into Arakaki's schedule.

Ron Cawthon (Cawthon) says he is here as a member of the La'aloa 'Ohana. The burial treatment plan for Haukalua Heiau submitted by the County demonstrates that no matter how many people try and get involved in protecting the Hawaiian culture, the County of Hawai'i through its misguided public servants continue to commit genocide against the Hawaiian people. The County is using one family to destroy Hawaiian religious and cultural practices. The County's attempt to get Oponui descendants recognized is to facilitate their burial treatment plan which says they will be moving the lele and anything on top of the Heiau including the iwi, because the iwi are on top of the Heiau in crypt.

Lindsey asks Cawthon to repeat his statement about removing iwi.

Cawthon says the iwi are on top of the Heiau not in the Heiau.

The County has focused on Kupuna who remembered the Heiau not looking like it does after the Heiau was rededicated in 1997. The Council must remember that those Kupuna were beaten, harassed and jailed for speaking the language and practicing religion. It was illegal to teach the Hawaiian language until 1986. When Cawthon first got involved with this issue, he would never have thought our public servants were so out of control. Eleven years later, La'aloa sits as a garbage dump for the parking lot these public servants built. Historic Preservation does nothing, and the County claims that one family can dictate the religious practices of all Hawaiians. These public servants get paid while we all wait here today. These public servants are out of control and act like they are our masters. La'aloa demonstrates that no matter what this Council does, it does not matter. The County wants to empower this one family so it will empower the County to destroy the Hawaiian culture. Our public servants want to destroy all signs of the Hawaiian culture being alive and well. The net affect of what this Council does is rubber stamping the destruction of the Hawaiian culture. This Council is for the developer, the law protects the iwi not this Council.

The Council recommended in April that nothing should be removed from the Heiau unless there was agreement between recognized descendants, cultural practitioners and community groups with an interest in La'aloa. The burial treatment plan says they will remove the lele and destroy everything that was done in 1997.

Lindsey says there are new Council members who don't have the background on this issue. Lindsey sees the Council as being in an extreme disadvantage, especially the new members who don't even have a minimal summary of what is happening here.

Young says this will be on the agenda again, and hopefully at that time the Council will have the background.

Sonny Pa'alua (Pa'alua) says he is from Kohala. His concern is for La'aloa. His biggest support is for the La'aloa 'Ohana. He represents himself and his 'ohana only. Pa'alua says he hopes there is a day that he can come over from Kohala and reminisce with other kupuna at La'aloa. We all need to work together to make decisions in harmony.

Hauani'o says the Oponui 'Ohana in La'aloa lived mauka. Hauani'o does not know how they link themselves up to the iwi at the Heiau.

Hauani'o needs clarification on the definition of direct lineal descendant and collateral lineal descendant.

Lindsey says direct lineal means just that, you have a direct lineal connection to the iwi. Collateral means a connection for example to your great-grandfathers brother's line. Cultural is a connection to family that at one time lived in an ahupua'a where the burial is.

Hauani'o asks if scientific work goes into these recognitions.

Lindsey asks if Hauani'o means DNA testing.

Hauani'o says yes, science. How do we prove descendancy.

Lindsey says through oral and written testimony provided by a given family. The idea is to prove what science may verify, but DNA testing or bone analysis is rarely done.

Hauani'o says it is based on hearsay then.

Lindsey says in Hawaiian culture, oral testimony provided by a family is very important. Generally DNA testing is not done.

Lindsey feels the Council needs a complete overview of the La'aloa case if it is going back on the agenda.

Young asks if we are going to be ready to review this lineal claim next month.

Greer says most likely. Greer would like to clarify that when the Department receives a lineal descent claim, we check for both lineal and cultural. If an applicant does not qualify for lineal, we check for cultural.

Young asks if there are any recognized descendants to this La'aloa project at this point in time.

Lindsey says no.

Greer says the Department has only received the one lineal descent claim.

Young says we also have Arakaki's request.

McDonald says she also sent in a claim in 2000 and never heard anything back. McDonald wants the Department to go back and look for those documents.

Cawthon says there are others as well.

Lindsey says when someone is trying to establish a cultural connection to an ahupua'a, they need to establish a connection to family that is or was historically in that place, so you

may be lineal to that ancestor who lived in that ahupua'a, but unless that ancestor is the person buried in a site, you are still cultural to that ahupua'a.

In this case, the applicant may potentially be lineal to Opunui, because they are trying to establish a connection to La'aloa, but Lindsey has never heard anyone identify Opunui as the individual buried in the Heiau. That is what the department needs to clarify.

Young says when the Council made recommendations back in April 2005, it was without any lineal and/or cultural descendants comments.

Lindsey says no formally recognized descendants.

Young wants to make sure the Council gets all the background information from the Department. If the La'aloa 'Ohana has documents for the Council, Young would like to see those as well.

A motion is made to defer the recognition of lineal and/or cultural descendants at La'aloa da until the next meeting.(Sherlock/Saffrey)

Vote: All in Favor

A motion is made to close this agenda item (Elarionoff/Helbush)

Vote: All in Favor

Sherlock would like to say that she does not appreciate having to wait around until staff returned from another planned meeting. This meeting was scheduled.

Kanemoto says he wants the Council to understand that he has many other clients within the DLNR that have other matters. Kanemoto did not know about the other meeting, but it was scheduled for the lunch break of this HIBC meeting.

Sherlock says the Department needs to figure out a way to deal with that, maybe send another AG.

Kanemoto says he recommended rearranging the agenda so the La'aloa matter could be taken up when he and Greer returned, and Kanemoto thinks that is what occurred.

Young says everyone was very cooperative in adjusting the agenda and does not see any problems there. The point is that in light of how the Council has come under certain scrutiny, we need to make sure we are walking within the guidelines, and there is a need to have a AG present for the entire meeting. Young knows that the meetings run long.

Kanemoto says he comes early in the morning and leaves in the evening, and that is when he is available to attend these meetings. If the Council wants to make sure he is here, there are time restrictions the Council needs to regulate to make sure Kanemoto is here. Kanemoto says when his flight leaves, he is going to be on that flight. Kanemoto says there have been complaints about him leaving on a 548p flight after a meeting that started at 900a.

Sherlock says she is not objecting to Kanemoto leaving on his flight.

Kanemoto this other meeting was a last minute thing, and his presence was requested.

IV. CASE UPDATES

A. BURIAL TREATMENT PLAN FOR AN AREA IN THE AHUPUA'A OF HONOKOHAU I (NUI) AND II (IKI), KONA DISTRICT, ISLAND OF HAWAI'I [TMK (3) 7-4-08:13, (3) 7-4-08:30 AND (3) 7-4-08:074]

Information/Recommendation: SHPD staff will update the HIBC on the ongoing discussions and consultations regarding approval of a final preservation plan for the burials located on the subject property.

Lindsey says last month, the HIBC determined preservation in place of the previously identified burials on this property. The Department is within the 90 time period to approve the overall preservation plan for the burials. Lindsey thinks the one issue that remains unresolved is the proposed Kamanu Street Connection. In early December there is a descendant meeting scheduled by West Hawai'i Business Park to address among things that issue. The Department is working on getting correspondence out to the descendant group seeking input on this issue.

V. ADJOURNMENT

The meeting is adjourned at 320p.